

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT  
DISTRICT OF WASHINGTON  
AT SEATTLE

ORDER DECLINING TO SERVE  
COMPLAINT AND GRANTING LEAVE  
TO AMEND

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1 874, 875 (9th Cir. 1990), cert. denied, 498 U.S. 1126 (1991).  
2 In Heck v. Humphrey, 512 U.S. 477 (1994), the United States  
3 Supreme Court held that a § 1983 claim that calls into question  
4 the lawfulness of a plaintiff's conviction or confinement does  
5 not accrue "unless and until the conviction or sentence is  
6 reversed, expunged, invalidated, or impugned by the grant of a  
7 writ of habeas corpus." Id. at 489.

8 (2) The Court declines to order that Plaintiff's complaint  
9 be served on Defendants until he corrects the deficiencies  
10 identified below:

11 (a) Plaintiff appears to allege in his civil rights  
12 complaint that his constitutional rights were violated by the  
13 conduct of King County Superior Court Judge Darrel Philips, King  
14 County Deputy Prosecuting Attorney Sharon Hayden and King County  
15 Probation Officer Heather Schwall.

16 The Supreme Court of the United States has held that, in  
17 light of common law immunity principles, persons who perform  
18 official functions in the judicial process are absolutely immune  
19 from liability for damages under 42 U.S.C. § 1983. Briscoe v.  
20 LaHue, 460 U.S. 325, 334-36 (1983). Prosecutors have  
21 specifically been accorded absolute immunity from section 1983  
22 claims for acts done within the scope of their official duties.  
23 Imbler v. Pachtman, 424 U.S. 409 (1976). "If the prosecutor  
24 acts as an advocate 'in initiating a prosecution and in  
25 presenting the State's case,' absolute immunity is warranted."

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1 Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675,  
2 678 (9th Cir. 1984) (quoting Imbler, 424 U.S. at 430-431). In  
3 addition, "probation officers preparing reports for the use of  
4 state courts possess an absolute judicial immunity from damage  
5 suits under [§] 1983 arising from acts performed within the  
6 scope of their official duties." Demoran v. Witt, 781 F.2d 155,  
7 157 (9<sup>th</sup> Cir. 1986).

8       The allegations made by Plaintiff against Defendant Philips  
9 appear to represent actions taken by this judicial officer in  
10 his official capacity. Defendant Philips is therefore  
11 absolutely immune from liability for damages in this action.  
12 Likewise, the allegations made by Plaintiff against Defendant  
13 Hayden appear to represent actions taken in her role as an  
14 advocate for King County. Finally, the allegations made by  
15 Plaintiff against Defendant Scwall appear to arise from acts she  
16 performed within the scope of her official duties for King  
17 County. Accordingly, they are immune from liability for damages  
18 in this § 1983 action.

19       (c) Finally, the allegations set forth in the complaint  
20 arise out of a criminal investigation of Plaintiff and his  
21 subsequent prosecution. It appears likely that a decision on  
22 these claims would call into question the validity of  
23 Plaintiff's present confinement. In order to proceed on these  
24 claims, Plaintiff must demonstrate that his claims against are  
25 not barred by Heck.

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1 (3) Plaintiff may file an amended complaint curing the  
2 above-mentioned deficiencies within thirty days of the date on  
3 which this Order is signed. The amended complaint must carry  
4 the same case number as this one. If no amended complaint is  
5 timely filed, or if Plaintiff fails to correct the deficiencies  
6 identified in this Order, the Court will dismiss this action for  
7 failure to state a claim under 28 U.S.C. § 1915(e)(2).

8 (4) The Clerk is directed to send Plaintiff the  
9 appropriate forms so that he may file an amended complaint. The  
10 Clerk is further directed to send copies of this Order, and of  
11 the General Order, to Plaintiff and a copy of this Order to the  
12 Honorable Marsha J. Pechman.

13 DATED this 12 day of September, 2000.

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18 MONICA J. BENTON  
19 United States Magistrate Judge  
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